

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

MARCH SESSION, 1997

<p>FILED</p> <p>November 4, 1997</p> <p>Cecil W. Crowson Appellate Court Clerk</p>
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MELVIN LEE BURKETT,)
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 Appellant,)
)
 v.)
)
 STATE OF TENNESSEE,)
)
 Appellee.)

No. 01C01-9605-CC-00202
 Humphreys County
 Honorable Allen W. Wallace, Judge
 (Post-Conviction)

DISSENTING OPINION

I respectfully dissent because I believe that State v. Roger Dale Hill, Sr., No. 01C01-9508-CC-00267, Wayne County (Tenn. Crim. App. June 20, 1996), app. granted (Tenn. Jan. 6, 1997), represents the law in Tennessee. The indictment in the present case is similar to that in Hill in all material respects. I note that in Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979), the United States Supreme Court concluded that conviction and punishment of an individual upon legally insufficient evidence constituted a violation of due process. I believe that, similarly, conviction and punishment upon a void indictment would constitute a violation of due process.

Joseph M. Tipton, Judge